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FEDERAL COMMUNICATIONS COMMISSION
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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
)
Amendment of the Part 69 Allocation) CC Docket No. 92-222
of General Support Facility Costs)

REPLY TO OPPOSITIONS TO PETITION FOR RECONSIDERATION

MFS Communications Company, Inc. ("MFS"), by its undersigned counsel, hereby replies to the oppositions filed with the Commission to MFS' petition for reconsideration of the Report and Order approving rules amendments in this docket.¹

In its Petition for Reconsideration, MFS argued that reallocation of general support facility (GSF) costs in this docket should not have been implemented until the Commission has resolved other issues regarding the cost basis for LEC special access rates; namely, the cost basis for existing special access volume and term discounts and the cost basis for expanded interconnection offerings.² The LECs, in opposition, essentially contend that the Commission should correct the allocation of GSF costs immediately without considering any other factor. These parties contend that the Commission should put blinders on itself. They urge the Commission to focus

¹ Oppositions were served on MFS by each of the seven Regional Bell Operating Companies, and by the United States Telephone Association ("USTA").

² The former issue is currently the subject of an informal inquiry by the Common Carrier Bureau, while the latter is the subject of a formal investigation in CC Docket No. 93-162. See *Local Exchange Carriers' Rates, Terms, and Conditions for Expanded Interconnection for Special Access*, Order Designating Issues for Investigation, DA 93-951 (released July 23, 1993).

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exclusively on correcting one aspect of cost allocations (GSF) that has allegedly caused special access rates to be too high in the past, while ignoring other policies that have permitted LECs to subsidize the offering of certain high-capacity services to selected large users at unjustifiably *low* rates. Although such a narrow and short-sighted approach is undoubtedly in the LECs' interest in this particular instance, that does not make it in the public interest.

Indeed, the LECs' position in this case is highly ironic, since in many other cases they have urged the Commission to delay actions that would open up their markets to competition until a host of other, "related" issues is resolved. That has been the LECs' consistent rallying cry at least since MFS filed its landmark Petition for Rulemaking, seeking the introduction of expanded interconnection, in November 1989, and has been repeated throughout the Commission's consideration of both special access and switched transport interconnection issues in CC Docket No. 91-141. When the LECs' self-interest is threatened, they urge the Commission to do nothing until it has considered every possible implication of every issue, and has undertaken a comprehensive overhaul of the entire access charge system. On the other hand, when Commission action will promote the LECs' interests, they urge "full speed ahead."

In addition to their rather cursory defense of the merits of GSF reallocation, some LECs choose to attack MFS' motives in filing its Petition for Reconsideration, arguing that MFS seeks to hinder competition and benefit from a "price umbrella."³ *See, e.g.,*

³ Such attacks have no proper place in this proceeding. It is obvious that it would be in (continued...)

Pacific Bell *et al.* Opposition at 2; Southwestern Bell Opposition at 3-4; USTA Opposition at 3. Besides being irrelevant, this argument misrepresents the effect of the GSF rules on price cap LECs. The allocation of "excessive" GSF costs to the special access category would not *require* these LECs to raise their special access rates, which they argue would put them at a competitive disadvantage; it would merely *permit* them to do so by increasing the price cap on the special access basket. LECs are free to set their prices lower than the price cap level, although they try to avoid doing so for the obvious reason that this reduces their revenues.⁴

In fact, several of the major LECs had reduced their special access rates below the cap level before the Commission acted in this docket, presumably in response to the emergence of limited competition in some of their special access markets. The GSF reallocation permitted these LECs to *increase* their overall revenues, and thus insulate themselves against the effects of competition, by shifting costs to the monopoly common line charge.⁵ MFS does not seek to prevent the LECs from reducing their special access

³(...continued)

MFS' business interest to delay GSF reallocation until the volume/term discount and expanded interconnection tariff investigations are resolved, which MFS hopes will be sooner rather than later; just as it is obvious that the opposite result would be in the LECs' business interest. The Commission should base its decision on the merits, not on whose ox is being gored.

⁴ Rate reductions are constrained somewhat by the pricing flexibility bands that apply to individual service categories and subcategories within the basket; however, the LECs are entitled to file "below-band" rates subject to an "average variable cost" demonstration.

⁵ For example, if a particular LEC's special access revenues were \$20 million below the cap level before GSF reallocation, and that reallocation reduced the LEC's special access cap by \$30 million, the LEC would have to reduce its special access revenues only by another \$10 million to remain in compliance with the rules. That company would, however, be able to take the full \$30 million increase in the common line category.

rates, but does seek to prevent them from financing those rate reductions through excessive revenues from their monopoly services. And, while the GSF cost reallocation alone might not constitute subsidization (since the Commission found that the original cost allocation rule was flawed), the fact remains that this rule change does not exist in a vacuum. Rates for selected high-volume special access customers are already subsidized through excessive volume and term discounts that are being funded by other LEC ratepayers, and the GSF reallocation has simply aggravated the situation.

MFS is also constrained to respond briefly to the unwarranted attacks on it made in Bell Atlantic's opposition. Bell Atlantic has chosen to introduce in this docket irrelevant and meritless complaints regarding MFS' tariffing practices, even though these issues are the subject of a pending formal adjudicatory proceeding before the Commission.⁶ Bell Atlantic's charge that MFS' Petition is "an abuse of [the Commission's] regulatory processes," Opposition at 3, rings particularly hollow in light of its apparent effort to prejudice the Commission's resolution of the formal complaint proceeding by repeating these unsupported allegations in other dockets whenever an even remotely colorable opportunity presents itself.⁷

⁶ *Bell Atlantic Telephone Companies v. MFS Telecom, Inc.*, File No. E-93-017 (formal complaint filed Nov. 17, 1992).

⁷ Indeed, the strident tone of Bell Atlantic's Opposition may be attributable to the fact that the President of MFS recently asked the Commissioners to impose sanctions against Bell Atlantic for violating the Communications Act and Commission orders in the *Expanded Interconnection* proceeding. See letter from Royce J. Holland to Commissioners Quello, Barrett and Duggan, July 21, 1993. The notion that Bell Atlantic, having been accused of abusing the Commission's processes in one specific factual context, is thereby justified in casting similar accusations at MFS whenever the two companies disagree on a policy issue, is so self-evidently absurd that it requires no further comment.

For the foregoing reasons, MFS' Petition for Reconsideration should be granted.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Andrew D. Lipman", written over a horizontal line.

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Dated: August 6, 1993

CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of August 1993, copies of MFS Communications Company, Inc.'s Reply to Oppositions to Petition for Reconsideration were served by first class mail, postage prepaid, on the following:

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